IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1539 of 1998
with
SPECIAL CIVIL APPLICATION NOS. 1540, 1541, 1542, 1543, 1544 AND 1545 ALL OF 1998.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TALUKA DEVELOPMENT OFFICER

Versus

DHURABHAI VIRABHAI VANKAR

Appearance:

1. Special Civil Application No. 1544 of 1998 :
Mr. M.R. Shah for the petitioner.
Mr. J.D. Ajmera for the respondent.

1. Special Civil Application No. 1539 to 1543 & 1545 of 1998
MR MUKESH R SHAH for Petitioners No. 1-2
MR BM MANGUKIYA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. M.R. Shah for the petitioners in this group of petitions and Mr. J.D. Ajmera as well as Mr. B.M. Mangukia for the respondents workmen in these group of petitions.

The respondents herein were working with the petitioner and their services were terminated in the year 1998 on 26th July, 1988 and, therefore, they raised industrial dispute before the labour court Godhra by filing separate reference. Before the labour court, the petitioner was not remaining present in these references and, therefore, the labour court made an exparte award dated 8th July, 1993 and has, thereby, granted reinstatement with continuity of service with full back wages with interim period. Thereafter, for setting aside such an ex parte award, the petitioners moved applications before the labour court under Rule 26-A of the Industrial Disputes Act (Gujarat) Rules 1966. Said applications preferred by the petitioner before the labour court were objected by the respondent workmen. Thereafter, said applications under rule 26-A of the said Rules were dismissed by the labour court for default in absence of the petitioner and, therefore, the petitioner filed applications for restoration of those applications under rule 26-A of the said Rules by filing Misc. Application No. 48 of 1994 to 54 of 1994 wherein the labour court has passed order dated 9th December, 1997 and has rejected the said applications no. 48 of 1994 to 54 of 1994 with cost of Rs.250.00 in each of the applications.

Learned advocate Mr. Shah appearing for the petitioner in this group of petitions has submitted that initially an ex parte award was made by the labour court in the references in absence of the petitioner and, therefore, as stated earlier, applications under rule 26-A of the said Rules were moved by the petitioner before the labour court for setting aside the ex parte award which were rejected by the labour court in absence of the petitioner. Thereafter,the petitioner has filed miscellaneous application nos. 48 of 1994 to 54 of 1994 for restoration of such applications which were filed for setting aside ane x parte award. Said application which was filed by the petitioner for restorationo f the earlier application has been rejected by the labour court on the ground that there is no provision for restoration under the Industrial Disputes (Gujarat) Rules, 1966 that once application for setting aside the ex parte award is

dismissed for default in absence of the petitioner, then, such applications cannot be restored as there is no provision under the Rules and, therefore, the labour court has rejected all these applications for restoration of the earlier applications which were dismissed for default. Therefore, learned advocate Mr. M.R.Shah has relied upon the decision of the apex court in case of Grindlays Bank Ltd. versus The Central Government Industrial Tribunal and others reported in AIR 1981 SC 606 and has submitted that in view of the principles laid down by the apex court in the aforesaid decision, the petitioner is entitled to the relief prayed for in these miscellaneous applications.

As against that, learned advocate Mr. J.D. Ajmera and Mr. Mangukia appearing for the respondents herein have jointly submitted the petitioner was negligent and has failed to remain present before the labour court on both the occasions and, therefore, now the matter cannot be restored in favour of the petitioner. They have, thus, submitted that these petitions are liable to be rejected.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court as well as the order made by the labour court on an applications which were moved by the labour court for setting aside such ex parte award.

I have also perused the order passed by the labour court in miscellaneous application no. 48 of 1994 to 54 of 1994 dated 9th December, 1997 wherein the restoration application has also been rejected by the labour court.

According to my opinion, the labour court has committed gross error in coming to the conclusion that there is no provision under the Industrial Disputes (Gujarat) Rules for restoration of the matter which has been dismissed for default by the labour court. The view of the apex court in case of Grindlays Bank Ltd. versus The Central Government Industrial Tribunal and others reported in AIR 1981 SC 606 is material. In para 6 and 7 of the said decision, the apex court has observed as under:

> 6. We are of the opinion that the Tribunal had the power We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It

is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

7. Sub-section (1) of s. 11 of the Act, as substituted by s. 9 of the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956 is in these terms:

"11. (1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit."

The words 'shall follow such procedure as the arbitrator or other authority may think fit' are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the justice of the case demands. Under cls. (a) to (c) of sub-s. (3) of s. 11, the Tribunal and other authorities have the same powers as are vested in civil courts under the Code of Civil Procedure, 1908, of (a) enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, and (c) issuing commissions for the examination of witnesses. Under cl. (d) thereof, the Tribunal or such other authorities have also the same powers as are vested in civil courts under the Code of Civil Procedure, 1908 in respect of such other matters as may be prescribed. Although the Tribunal or other authorities specified in s. 11 are not courts but they have the trappings of a court and they exercise quasi-judicial functions."

Therefore, in view of the observations as aforesaid made by the apex court, even in case there is no power or provision to restore the matter which has been dismissed for default, then also, the labour court is having incidental or ancillary power to do the justice between the parties and, therefore, in view of the provisions of under the aforesaid Rules and also in view of the principles laid down by the apex court in aforesaid decision, the view of the labour court in rejecting the applications for restoration of application for setting aside the ex parte award is erroneous and therefore, such orders passed by the labour court on the aforesaid miscellaneous application nos. 48 of 1994 to 54 of 1994 are required to be quashed and set aside by directing the labour court concerned to decide the said applications for restoration of the applications in accordance with law within some reasonable period after giving reasonable opportunity to the parties before it.

Accordingly, the orders passed by the labour court, Godhra in Misc. Application Nos. 48 of 1994 to 54 of 1994 dated 9th December, 1997 are hereby set aside and the labour court is now directed to consider and decide the said applications in accordance with law within three months from the date of receipt of copy of this order after giving reasonable opportunity to the parties before it. Petitioner is further directed to pay to each of the respondents in these petitions an amount of Rs.2,000.00 as cost by account payee cheque within one month from the date of receipt of copy of this order. Before proceeding with the Misc. Application No. 48 of 1994 to 54 of 1994 for restoration of the applications for setting aside the ex parte orders made by the labour court in the respective references, the labour court shall ascertain as to whether the petitioner has paid the amount of cost as directed hereinabove or not and thereafter, the labour court shall proceed with the hearing of the Misc. Application Nos. 48 of 1994 to 54 of 1994 in terms of the directions as aforesaid issued by this Court. Rule is made absolute in terms indicated hereinabove.

6.3.2002. (H.K. Rathod,J.)

Vyas